INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	2
State statute the validity of which is drawn in question	2
Nature of the case and rulings below	4
Substantial nature of Federal questions	9
Cases believed to sustain the jurisdiction	11
Exhibit "A"—Notice of appeal to the Court of Appeals	12
Exhibit "B"—Order of Appellate Division denying leave to appeal	14
Exhibit "C"—Order of Court of Appeals denying leave to appeal	14
Exhibit "D"—Order of Court of Appeals denying leave for reargument on motion motion for leave to appeal	15

Table of Cases Cited.

American Ry. Exp. Co. v. *Levee*, 263 U. S. 19	11
Colgate v. *Harvey*, 296 U. S. 404	10
Cumberland Coal Co. v. *Board*, 284 U. S. 23	10
Eq. Life Ass'ce Soc. v. *Brown*, 187 U. S. 308	9
Iowa-Des Moines Bank v. *Bennett*, 284 U. S. 239	10
Kansas City So. Ry. Co. v. *Road Improvement District*, 256 U. S. 658	10
Liggett Co. v. *Lee*, 288 U. S. 517	10
Louisville Gas Co. v. *Coleman*, 277 U. S. 32	10
Matter of Modern Industrial Bank v. *Graves*, 260 App. Div. 349	9
Mayflower Farms v. *Ten Eyck*, 297 U. S. 266	11
Nashville C. & St. L. Ry. v. *Walters*, 294 U. S. 405	6
Norfolk & S. Turnpike Co. v. *Virginia*, 225 U. S. 264	11
Royster Guano Co. v. *Virginia*, 253 U. S. 412	10

Page

Schlesinger v. *Wisconsin*, 270 U. S. 230 10
Stewart Dry Goods Co. v. *Lewis*, 294 U. S. 550 10
Zucht v. *King*, 260 U. S. 174 9

STATUTES CITED.

Judicial Code, Section 237a, as amended (28 U. S. C. A. 344a), and Section 1 of the Act of Congress of January 31, 1928 (C. 14, 45 Stat. 54), as amended by the Act of Congress of April 26, 1928 (C. 440, 45 Stat. 466) 2, 4
Laws of New York, 1926, c. 286; L. 1927, c. 477 6
Laws of New York, 1931, c. 490, 494; L. 1934, c. 500; L. 1937, C. 619, 888 6
New York Civil Practice Act:
Section 78 ..... 4, 8
Section 592 3
Section 1296 7
New York Tax Law (Laws of 1909, c. 62, constituting c. 60 of the Consolidated Laws of New York, as amended, Laws of 1927, c. 477):
Article 9-A, Section 209 2
Article 9-A, Section 215 (as amended by Laws of 1936, c. 125, Section 2 and Laws of 1937, c. 183, Section 2) 2
Article 9-B, Section 219-p, subdivision 6 ..... 2, 3
Article 9-B, Section 219-q 2, 3

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 331

THE MORRIS PLAN INDUSTRIAL BANK OF NEW YORK,

Appellant,

against

MARK GRAVES, OGDEN J. ROSS AND JOHN P. HENNESSEY, AS AND CONSTITUTING THE STATE TAX COMMISSION OF THE STATE OF NEW YORK.

JURISDICTIONAL STATEMENT.

In compliance with Rule 12 of the Revised Rules of the Supreme Court of the United States, appellant submits herewith its statement showing the basis of the jurisdiction of the Supreme Court of the United States to entertain the appeal in the above-entitled cause from an order of the Appellate Division of the Supreme Court of the State of New York at a term commencing on November 12, 1940, and entered on December 2, 1940. Application for said appeal to the United States Supreme Court was presented on July 8th, 1941.

(1) The statutory provisions which sustain the jurisdiction of the Supreme Court of the United States to entertain the appeal in this case are Section 237-(a) of the Judicial Code of the United States, as amended (28 U. S. C. A. § 344-(a)) and Section 1 of the Act of Congress, January 31, 1928 (c. 14, 45 Stat. 54), as amended by the Act of Congress of April 26, 1928 (c. 440, 45 Stat. 466), which provide that the Supreme Court of the United States may review, upon appeal, a final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution of the United States, and the decision is in favor of its validity.

(2) The Statutes of the State of New York, the validity of which is drawn in question in this case, are Article 9-A and Article 9-B of the New York Tax Law (Laws of 1909, c. 62, constituting c. 60 of the Consolidated Laws of New York, as amended, Laws of 1927, c. 477), and, in particular, subdivision 6 of Section 219-p of said Article 9-B. Section 209 of said Article 9-A imposes a franchise tax upon every domestic corporation for the privilege of exercising its franchise in the State of New York. Section 215 of said Article 9-A (as amended by Laws of 1936, c. 125, Section 2, and Laws of 1937, c. 183, Section 2) prescribes the manner of determining the said franchise tax, to-wit, 6% of the net income of the Corporation. Section 219-q of Article 9-B of the Tax Law imposes a franchise tax of 4½% of net income upon State banks, trust companies and financial corporations for the privilege of exercising their franchises in New York. Subdivision 6 of Section 219-p of said Article 9-B, however, provides:

> "6. Notwithstanding the provisions of this article, all corporations of classes now or heretofore taxable

under article nine-a of this chapter shall continue to be taxable under article nine-a."

Said Subdivision 6 excludes the appellant from classification under Article 9-B and results in the appellant's classification under Article 9-A.

(3) The order from which this appeal is taken, to wit, the order of the Appellate Division of the State of New York, Third Department, affirming a determination of the New York State Tax Commission, was rendered at a term commencing on November 12, 1940, and was entered on December 2, 1940. Within the time prescribed by Section 592 of the New York Civil Practice Act, to-wit, on January 14, 1941, there was duly served and filed in the Albany County Clerk's Office a notice of appeal to the Court of Appeals of the State of New York from the Appellate Division's said order of confirmance. A true copy of that notice of appeal is hereto annexed, marked "Exhibit A" and made a part hereof. The appellant also moved for leave to appeal to the Court of Appeals before both the Appellate Division and the Court of Appeals. Both Courts denied such motions, the Appellate Division by an order dated March 5, 1941, a true copy of which is annexed hereto and marked "Exhibit B" (see 261 App. Div. 1018), and the Court of Appeals by an order dated April 17, 1941 and entered on April 22, 1941, a true copy of which is annexed hereto and marked "Exhibit C." In order that it might be perfectly clear that the appellant had exhausted its remedies in the Courts of the State of New York, and that leave to appeal had not been denied because appellant was entitled to appeal as of right, the appellant moved in the Court of Appeals on June 9, 1941 (Notice of Motion was dated June 2, 1941) for a reargument of the appellant's motion for leave to appeal to the Court of Appeals and for an amendment of the aforesaid order of the Court of Appeals, dated April 17,

1941, so that the same would indicate whether or not the appellant's motion had been denied on the ground that the appellant was entitled to appeal to the Court of Appeals as of right. By an order dated June 19, 1941, a true copy of which is annexed hereto and marked "Exhibit D," the Court of Appeals denied the last-mentioned motion but stated in its said order:

> "Denial of original motion was not based upon the ground that the appeal lies as of right."

(4) For a statement of the nature of the case and the rulings of the State Courts, and the basis upon which it is contended that this Court has jurisdiction of the cause under Section 237-(a) of the Judicial Code, the appellant respectfully shows:

This is a *certiorari* proceeding brought by the appellant in the Supreme Court of the State of New York, Albany County, to review a determination of the New York State Tax Commission denying the appellant's claim for a redetermination of the franchise tax imposed for the tax years 1937 and 1938 under Article 9-A of the New York Tax Law. The proceeding was governed in the State Courts by Article 78 of the New York Civil Practice Act and was commenced by the personal service of a notice of application and petition upon the appellees, the New York State Tax Commission, on April 9, 1940, and by the filing of the petition with the Albany County Clerk. Such service and filing in said court, the court of first instance of this cause, constituted the first judicial proceedings in the matter. The appellant had also in the prior administrative proceedings at all times asserted its rights under the Constitution of the United States, as follows:

The appellant paid under protest the franchise taxes involved in this proceeding, objecting to its classification,

assessment and taxation under Article 9-A of the New York Tax Law on the ground that such classification, assessment and taxation thereunder, instead of under Article 9-B of the Tax Law, constituted a discriminatory and unfair classification and contending that such a tax was unconstitutional by reason of such unequal classification. The appellant took the position that all banks similarly situated must be treated alike and that the tax imposed was discriminatory and constituted an unreasonable classification for taxation purposes, favoring State banks and trust companies and financial corporations at the expense of industrial banks. The appellant duly applied for revision, resettlement and readjustment of the franchise tax and, on November 29, 1939, attended a hearing before the State Tax Commission, filed a written statement specifying its grounds of complaint, and gave testimony that its powers and business during the years in question were substantially the same as those of State banks, trust companies and financial corporations. The State Tax Commission affirmed the assessment theretofore made against the appellant.

The appellant in its petition before the Supreme Court of the State of New York, Albany County, alleged that the assessments were erroneous by reason of discriminatory and unfair classification; that the taxes imposed upon the appellant were invalid and unconstitutional; that the valuation of said franchise tax as fixed by the State Tax Commission was an unfair classification, discriminatory and a violation of the State and Federal Constitutions; that the said classification was unequal, did not classify for purposes of taxation, and did not tax all banks doing the same type of business in the same way.

In order that the full force of the appellant's contention may be understood, a brief history of the legislation involved must be given. In and prior to 1937, by amendments

to the Banking Law, State banks were endowed with power to make industrial or "Morris Plan" loans, while industrial ("Morris Plan") banks, including the appellant, were authorized to engage in general commercial banking (see *e. g.* L. 1931, c. 490, 494; L. 1934, c. 500; L. 1937, c. 619, 888). Both types of banks availed themselves of the powers so given. In and after 1937, therefore, State banks (governed by Article 3 of the Banking Law) and industrial banks (governed by Article 7 of said Law) were authorized to do, and actually did, carry on substantially the same business. Despite this identity of the powers and business of institutions governed respectively by Articles 3 and 7 of the Banking Law, industrial banks continued to be assessed, for franchise tax purposes, at a rate of 6% of net income, whereas State banks and trust companies were assessed at a rate of only 4½%. Such inequality in taxation arose by virtue of the fact that the Legislature had failed to make appropriate changes in the Tax Law to meet the altered circumstances.

The controlling provisions of the Tax Law had been enacted some ten years previously in 1926 and 1927 (L. 1926, c. 286; L. 1927, c. 477). Appellant admits that there was ample ground for the respective classifications at the time when they were established, but contends that the subsequent amendments to the Banking Law, which removed all substantial differences between industrial ("Morris Plan") banks and State banks, made adherence to the old Tax Law classifications arbitrary, discriminatory and unconstitutional. The principle we invoke is that enunciated by Mr. Justice Brandeis, as follows:

> "A statute valid as to one state of facts may be invalid as to another. A statute valid when enacted may become invalid by change in conditions to which it is applied." (*Nashville, C. & St. L. Ry.* v. *Walters*, 294 U. S. 405, 415.)

The State Tax Commission, in its amended return served on May 2, 1940, denied that the business transacted by the appellant during the years in question was the same, or substantially the same, as that transacted by State banks, trust companies and financial corporations; denied that the assessment against the appellant was erroneous by reason of the fact that it constituted discriminatory and unfair classification, or for any other reason; and denied that the taxes imposed upon the appellant were invalid and unconstitutional.

At a Special Term held on May 10, 1940, the Supreme Court of the State of New York, Albany County, transferred the *certiorari* proceeding for disposition to a Term of the Appellate Division of the Supreme Court of the State of New York, Third Department, in accordance with the provisions of Section 1296 of the Civil Practice Act and other applicable provisions thereof and of the Tax Law, in order that the determination of the State Tax Commission might be reviewed, both upon the law and upon the facts, and that if the said determination and the account audited and stated against the appellant should be found illegal or erroneous, they might be revised, corrected, vacated or re-stated by the Court according to law. No opinion was delivered by the Court at Special Term in making the order transferring the proceedings to the Appellate Division.

Upon the petition of the appellant and the amended return of the State Tax Commission, the Appellate Division, by order rendered at a term commencing on November 12, 1940, and entered on December 2, 1940, a true copy of which is annexed hereto and marked "Exhibit E," confirmed the determination of the State Tax Commission. On November 20, 1940, the Appellate Division handed down a brief deci-

sion, which is reported in 260 App. Div. 978, and the entire body of which is as follows:

> "Review of a determination of the State Tax Commission under Article 78 of the Civil Practice Act. The tax has been imposed upon petitioner under Article 9-A of the Tax Law. The argument of petitioner is that the lesser tax prescribed by Article 9-B should have been imposed. The identical question here presented has been passed upon by this court adversely to petitioner in *Modern Industrial Bank* v. *Graves*, 260 App. Div. 349.
>
> "Determination unanimously confirmed, with fifty dollars costs and disbursements."

Thereafter, further proceedings were had herein, as set forth in paragraph (3) hereof.

The question whether Article 9-A and Article 9-B of the New York Tax Law, as applied to the appellant, violate the equal protection and due process clauses of the Fourteenth Amendment were, therefore, raised by the appellant's original petition, were saved by the appellant's notice of appeal and motions for leave to appeal, were necessarily and directly presented to the Appellate Division, and were necessarily decided by that court against the appellant. The denials by the Court of Appeals of appellant's motion for leave to appeal and appellant's motion for reargument thereof are proof that the appellant has exhausted its remedies in the State courts and has obtained a decision by the highest State court in which a determination in this cause is obtainable.

(5) For a statement of the grounds upon which it is believed that the questions involved in the cause are substantial, the appellant respectfully shows:

The appellant has been taxed under Article 9-A of the Tax Law to the extent of 6% of its net income for the tax years beginning November 1, 1937, and November 1, 1938.

Had the appellant been taxed under Article 9-B of the said Tax Law, at the rate of 4½% of its net income, its taxes for the period in question would have been lower by the amount of $10,688.26, to which amount, together with interest, the appellant contends it is entitled. The question is, therefore, of great importance both to the appellant and to many other industrial or "Morris Plan" banks similarly situated and, moreover, is of permanent importance because of its annual recurrence.

Furthermore, the imposition of the aforesaid franchise tax raises questions both under the due process clause and under the equal protection clause of the Fourteenth Amendment which have never been before this Court.

The appellant respectfully submits that the Federal constitutional questions properly raised and necessarily decided by the State court and now before this Court on appeal are substantial Federal questions within the rule of *Zucht* v. *King*, 260 U. S. 174, 176, 177 (1922). It cannot be contended that they are "so absolutely devoid of merit as to be frivolous." *Cf. Eq. Life Ass'ce Soc.* v. *Brown*, 187 U. S. 308, 311 (1902). Nor can it be urged that they have been "so explicitly foreclosed by a decision or decisions of this Court as to leave no room for real controversy." (*Ibid.*) Nowhere in any of the orders or decisions rendered by the State courts at any stage of the proceedings was a single decision of the United States Supreme Court cited. Nor was any such case cited in *Matter of Modern Industrial Bank* v. *Graves*, 260 App. Div. 349 (Third Department, 1940) to which the Appellate Division referred in its decision of November 20, 1940 (260 App. Div. 978). Indeed, the decision in the *Modern* case went off on a question of statutory construction, and the precise constitutional question presented in the instant case was not even passed upon by the State courts.

The question whether the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution permit such a discriminatory tax as that imposed upon the appellant, is a substantial Federal question upon which this Court has never had occasion to pass and which has existed only since 1937. The assessment here in question involves an arbitrary and erroneous factual assumption that there are sufficient differences between industrial ("Morris Plan") banks and State banks and trust companies to justify the differences in rate of taxation. This Court has on many occasions held such unreasonable tax classifications to be arbitrary and unconstitutional.

Royster Guano Co. v. *Virginia*, 253 U. S. 412;
Bethlehem Motors Co. v. *Flynt*, 256 U. S. 421;
Kansas City So. Ry. Co. v. *Road Improvement District*, 256 U. S. 658;
Air-Way Corp. v. *Day*, 266 U. S. 71;
Louisville Gas Co. v. *Coleman*, 277 U. S. 32;
Cumberland Coal Co. v. *Board*, 284 U. S. 23;
Iowa-Des Moines Bank v. *Bennett*, 284 U. S. 239;
Liggett Co. v. *Lee*, 288 U. S. 517;
Stewart Dry Goods Co. v. *Lewis*, 294 U. S. 550;
Colgate v. *Harvey*, 296 U. S. 404.

Thus, this Court had laid down the rule that a "classification for purposes of taxation must rest on some reasonable distinction."

Schlesinger v. *Wisconsin*, 270 U. S. 230, 240;
Louisville Gas Co. v. *Coleman* (*supra*);
Colgate v. *Harvey* (*supra*).

The difference in treatment here complained of has no such reasonable basis.

The question here involved is, therefore, not foreclosed by the prior decisions of this Court and is a substantial question deserving review.

(6) The following cases support the jurisdiction of the Supreme Court of the United States in this cause:

Norfolk & S. Turnpike Co. v. *Virginia*, 225 U. S. 264, 269;

American Ry. Exp. Co. v. *Levee*, 263 U. S. 19;

Mayflower Farms v. *TenEyck*, 297 U. S. 266.

Respectfully submitted,

THE MORRIS PLAN INDUSTRIAL
BANK OF NEW YORK,
By HAROLD H. KISSAM,
Its Counsel,
Office & P. O. Address:
56 East 42nd Street,
Borough of Manhattan,
City of New York.

EXHIBIT "A".

SUPREME COURT, ALBANY COUNTY

In the Matter of the Application of THE MORRIS PLAN INDUSTRIAL BANK OF NEW YORK, *Petitioner-Appellant,*

against

MARK GRAVES, OGDEN J. ROSS and JOHN P. HENNESSEY, as and Constituting the State Tax Commission of the State of New York, *Respondents,*

To Review a Determination Made under Article 9-A of the Tax Law.

Notice of Appeal.

SIR:

Please Take Notice that the above-named petitioner appellant hereby appeals from the order of the Appellate Division of the Supreme Court for the Third Judicial Department, entered on the 2nd day of December, 1940, in the office of the Clerk of the County of Albany, which order unanimously confirmed a determination of the New York State Tax Commission bearing date and filed with the Department of Taxation and Finance on the 29th day of January 1940 in favor of the respondents and against petitioner appellant, affirming the assessments made by the State Tax Commission against the petitioner for the tax years beginning November 1, 1937 and 1938, holding said petitioner subject to the tax imposed by Article 9-A of the Tax Law, and said petitioner appellant appeals from each and every part of said order, and from the whole thereof, on the ground that the classification under Article 9-A of the Tax Law, the determination and assessment of the State

Tax Commission is violative of the State and Federal Constitutions.

Dated, New York, January 14, 1941.

Yours, etc.,

HAROLD H. KISSAM,
Attorney for Petitioner-Appellant,
Office & P. O. Address, 56 East 42nd Street,
Borough of Manhattan, New York City.

To: Hon. John J. Bennett, Jr., Attorney-General of the State of New York, Attorney for the State Tax Commission, Albany, New York.

STATE OF NEW YORK,
County of New York ss:

HAROLD H. KISSAM, being duly sworn, says:

I am the attorney for the Petitioner-Appellant herein, with offices at 56 East 42nd Street, Borough of Manhattan, City of New York.

That on the 14th day of January 1941, I served the within Notice of Appeal upon Hon. John J. Bennett, Jr., attorney for the State Tax Commission, by depositing a true copy of same, properly enclosed in a postpaid wrapper, addressed to

Hon. John J. Bennett, Jr., Attorney General of the State of New York, Capitol, Albany, New York.

in a mail chute, in the employ of the United States Government for delivering mail located on the third floor of No. 56 East 42nd Street, Borough of Manhattan, City of New York.

HAROLD H. KISSAM.

Sworn to before me this 14th day of January 1941. Fred Dammes, Commissioner of Deeds, City of New York. New York County Clerk's No. 61. New York County Register's No. 19-D-1. Commission Expires Nov. 28, 1941.

EXHIBIT "B".

SUPREME COURT, APPELLATE DIVISION, THIRD JUDICIAL DEPARTMENT.

Decision handed down March 5, 1941.

(390-34)

In the Matter of The Application of THE MORRIS PLAN INDUSTRIAL BANK OF NEW YORK, *Petitioner*,

for an Order of Certiorari,

v.

MARK GRAVES, and Others, as and Constituting the State Tax Commission of the State of New York, *Respondents*.

Decision of Appellate Division Handed Down March 5, 1941.

Motion for leave to appeal to the Court of Appeals denied.

Present: Hill, P. J. Crapser, Bliss, Heffernan and Foster, JJ.

(No opinion written unless indicated hereon.)

EXHIBIT "C".

IN COURT OF APPEALS, STATE OF NEW YORK.

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany, on the seventeenth day of April, A. D. 1941.

Present: Hon. Irving Lehman, Chief Judge, presiding.

In the Matter of the Application of THE MORRIS PLAN INDUSTRIAL BANK OF NEW YORK, *Petitioner-Appellant*,

vs.

MARK GRAVES & ORS., as and Constituting the State Tax Commission of the State of New York, *Respondents*, to Review a Determination Made under Article 9-A of the Tax Law.

Order.

A Motion for leave to appeal and to amend notice of appeal &c., to the Court of Appeals in the above cause

having been heretofore made upon the part of the petitioner-appellant herein, and papers having been duly submitted thereon, and due deliberation thereupon had:

Ordered, that the said motion be and the same hereby is denied with ten dollars costs and necessary printing disbursements.

A Copy.

JOHN LUDDEN,
Clerk.

[SEAL.]

EXHIBIT "D".

IN COURT OF APPEALS, STATE OF NEW YORK.

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany, on the nineteenth day of June A. D., 1941.

Present, Hon. Irving Lehman, Chief Judge, Presiding.

In the Matter of the Application of THE MORRIS PLAN INDUSTRIAL BANK OF NEW YORK, Petitioner-Appellant, vs. MARK GRAVES & Ors., &c., Constituting the State Tax Commission of the State of New York, Respondents.

Order.

A motion having heretofore been made herein upon the part of the petitioner-appellant for a reargument of motion for leave to appeal and to resettle order of this Court dated April 17, 1941, papers having been submitted thereon and due deliberation having been thereupon had, it is

Ordered, that the said motion be and the same hereby is denied. Denial of original motion was not based upon the ground that the appeal lies as of right.

A copy.

JOHN LUDDEN,
Clerk.

[SEAL.]

EXHIBIT "E".

At a term of the Appellate Division of the Supreme Court of the State of New York, Third Judicial Department, held at the County Court House in the City of Albany, N. Y., commencing on the 12th day of November, 1940.

Present: Hon. James P. Hill, Presiding Justice; Hon. John C. Crapser, Hon. F. Walter Bliss, Hon. Christopher J. Heffernan, Hon. Gilbert V. Schenck, Associate Justices.

In the Matter of THE MORRIS PLAN INDUSTRIAL BANK OF NEW YORK, Petitioner, for an order of certiorari, against MARK GRAVES, and Others, as and Constituting the State Tax Commission of the State of New York, Respondents.

Order Confirming Tax Assessment.

The above named Morris Plan Industrial Bank of New York, having heretofore applied to the Supreme Court, Albany County, pursuant to Article 78 of the Civil Practice Act, for a review of the final determination of the State Tax Commission holding the said Morris Plan Industrial Bank of New York subject to the tax imposed by Article 9-A of the Tax Law, and affirming assessments of said tax against the petitioner for the tax years beginning November 1st, 1937 and 1938, and the respondents having filed their Answer and Return and the proceeding having been transferred to this Court for disposition by Order of the Supreme Court granted on the 10th day of May, 1940, and entered in the office of the Clerk of Albany County on the 3rd day of July, 1940, and the issues raised having come on for hearing before this Court at the above named Term thereof, and the causes having been submitted by Harold H. Kissam, Esq. of counsel for petitioner, and the Court having heard John C. Crary, Jr., Assistant Attorney-General of Counsel for respondents, and due deliberation having been had thereon,

Now, on motion of John J. Bennett, Jr., Attorney-General of the State of New York, attorney for respondents, it is

Ordered, that the said determination of the State Tax Commission bearing date the 29th day of January, 1940, be and the same hereby is unanimously confirmed with $50.00 costs and disbursements.

JOHN S. HERRICK,
Clerk.

[SEAL.]

A true copy.
JOHN S. HERRICK.

Ent. 12/2/40.

(5680)